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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RICHARD LAND HOOVER,

Plaintiff and Appellant,

v.

CALPOP.COM, INC.,

Defendant and Respondent.

B254586

(Los Angeles County
Super. Ct. No. BC490859)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Law Offices of Armand Tinkerian and Armand Tinkerian for Plaintiff and Appellant.

Scott Sayre for Defendant and Respondent.

I. INTRODUCTION

In a prior action, defendant, CalPOP.com, Incorporated, sued plaintiff, Richard Land Hoover, for fiduciary duty breach. (*CalPOP.com, Inc. v. Hoover* (Aug. 6, 2015, B252595) [nonpub. opn.].) We affirmed the judgment entered by Judge Mary Ann Murphy. (*Ibid.*) In the present lawsuit, plaintiff sued defendant under Corporations Code section 709¹ to invalidate the election of directors on April 14, 2013. In this lawsuit, plaintiff complained of prior actions taken by defendant's directors board, including dilution of his voting shares and his removal from the board on March 4, 2011. The present case was tried by Judge James Chalfant. (For ease of reference, we will refer to Judge Chalfant as the trial court.) The trial court limited the scope of plaintiff's section 709 complaint to the April 14, 2013 shareholder meeting and election. The trial court found plaintiff failed to meet his burden of proof. The trial court concluded the April 14, 2013 election of defendant's directors was valid.

Plaintiff appeals from a judgment following a summary proceeding under section 709. Plaintiff contends the trial court erred by limiting the scope of his section 709 complaint to the April 14, 2013 election. Plaintiff also argues defendant's directors board acted illegally to dilute his shares which would invalidate the shareholder meetings and elections. We affirm the judgment.

II. BACKGROUND

On August 27, 2012, plaintiff filed a complaint against defendant to determine the validity of removal and election of the board of directors under section 709. Plaintiff subsequently filed a second amended complaint on May 14, 2013. Plaintiff alleges irregularities occurred during the April 14, 2013 shareholder meeting during which Matt

¹ Further statutory references are to the Corporations Code.

Corwin, John Bramlett, H.K. Ravinda Bandara, Edward Mazzarino and Steven Thai were elected as directors. Plaintiff complained of improper board of directors meetings in February and March 2011. Plaintiff asserted Mr. Corwin, Mr. Bramlett, and Mr. Van Niekerk issued invalid voting stock shares on February 21, 2011. This resulted in the dilution of plaintiff's shares. Plaintiff also complained of improper shareholder meetings in 2011. At the March 4, 2011 shareholder meeting, Mr. Corwin, Mr. Bramlett and Evert Van Niekerk were elected the directors. Plaintiff was removed as a director and not reelected.

On June 10, 2013, defendant demurred to plaintiff's second amended complaint and moved to stay the action. Defendant contended the trial court should stay the pending action because plaintiff's claims were raised and adjudicated in the prior action before Judge Murphy. The trial court overruled defendant's demurrer on July 2, 2013. However, the trial court limited the scope of plaintiff's second amended complaint to two issues. The first issue was, as of April 2013, who were the shareholders and what was the voting percentage? The second issue was whether the election was conducted pursuant to a required fair procedure?

Judge Murphy later entered judgment in favor of defendant and against plaintiff in the prior action on October 3, 2013. On October 25, 2013, defendant renewed its motion to stay the pending action until the October 3, 2013 judgment became final. On November 19, 2013, the trial court denied defendant's renewed motion for stay. The trial court again ruled that the prior action did not resolve the validity of the April 14, 2013 election.

On December 3, 2013, the section 709 proceeding was tried. The trial court's statement of decision stated plaintiff failed to meet his burden of proof. The trial court found plaintiff failed to cite any authority or present evidence that the dilution of his shares was invalid. The trial court also found defendant complied with notice and quorum requirements for the April 14, 2013 shareholder meeting. The trial court concluded the April 14, 2013 election of defendant's directors board was valid. On January 8, 2014, the trial court entered judgment in defendant's favor.

III. DISCUSSION

Defendant contends collateral estoppel principles resolves all of plaintiff's claims in this action. Issue preclusion, also known as collateral estoppel, is a form of res judicata. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 818; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341, fn. 3 (*Lucido*); *Danko v. O'Reilly* (2014) 232 Cal.App.4th 732, 749.) Our Supreme Court has held: "Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. [Citation.]" (*Lucido, supra*, 51 Cal.3d at p. 341, fn. omitted; see *Kemp Brothers Construction, Inc. v. Titan Electric Corp.* (2007) 146 Cal.App.4th 1474, 1477.) Our Supreme Court has explained: "The doctrine applies 'only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.] The party asserting collateral estoppel bears the burden of establishing these requirements. [Citation.]'" (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943; accord, *Lucido, supra*, 51 Cal.3d at p. 341.) It is undisputed the party against whom collateral estoppel is raised here, plaintiff, was the defendant in the prior action.

Here, defendant contends plaintiff's claims were litigated in the previous action before Judge Murphy and should be precluded from relitigation here. We note that Judge Murphy's statement of decision also made a finding concerning to defendant's April 14, 2013 directors board meeting. Judge Murphy found at the time of trial the directors board was composed of Mr. Bandara, Mr. Mazzarino, Mr. Thai, Mr. Corwin and Mr. Bramlett. Plaintiff's claims pertaining to the April 14, 2013 shareholder meeting were: he did not receive notice of the meeting; the meeting did not have a quorum of shareholders in attendance; the meeting did not have a quorum of valid voting shares

represented; the business conducted went beyond the scope of the notice; he did not chair the meeting despite being the board chairman; Mr. Corwin, Mr. Bramlett, and Mr. Van Niekerk lacked standing to call the meeting; and the prior March 4, 2011 shareholder meeting was invalid, meaning all subsequent shareholder meetings were also invalid. All of plaintiff's claims go towards the validity of the March 4, 2011 and April 14, 2013 shareholder meetings and director elections.

Plaintiff contends he did not litigate the issue of the validity of the election of directors in the prior action before Judge Murphy. We disagree. Plaintiff, in the prior action before Judge Murphy, argued the issue of whether defendant's directors board had standing to sue him for fiduciary duty breach. Plaintiff challenged the validity of the directors board during February and March of 2011. Plaintiff thus challenged the composition of the directors board in the prior action before Judge Murphy. Trial in the prior action before Judge Murphy commenced on April 4, 2013 and ended on May 1, 2013. Judge Murphy in the prior action found: Mr. Corwin, Mr. Bramlett, and Mr. Van Niekerk were on the directors board from August or September of 2008 through March 4, 2011; the directors board validly issued 6,982 Class A common stock shares to its employees and creditors on February 21, 2011; plaintiff's shares were not improperly diluted on February 21, 2011; plaintiff was not elected to the directors board on March 4, 2011; and the directors board from April 14, 2013, to present consisted of Mr. Mazzarino, Mr. Tsai, Mr. Corwin, Mr. Bramlett and Mr. Bandara.

Plaintiff's claims in his section 709 complaint raised these same issues. Like the prior lawsuit before Judge Murphy, plaintiff in this action contested the validity of the composition of defendant's directors board on March 4, 2011, and April 14, 2013. This issue was necessarily decided and actually litigated in the prior action before Judge Murphy. Issue preclusion principles apply to all of plaintiff's claims raised herein. We need not address the parties' remaining arguments.

IV. DISPOSITION

The judgment is affirmed. Defendant, CalPOP.com, Incorporated, is entitled to its appeal costs from plaintiff, Richard Land Hoover.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J.^{*}

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.